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In the Supreme Court of the United States

OCTOBER TERM, 1983

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ET AL., PETITIONERS

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General

RICHARD K. WILLARD
Acting Assistant Attorney General

LEONARD SCHAITMAN
MICHAEL KIMMEL
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether Section 3304(a)(15)(A)(i) of the Federal Unemployment Tax Act requires offset of Social Security pension benefits against unemployment benefits where the claimant's base period employer contributes to the Social Security pension plan, regardless of whether the claimant became fully insured for Social Security benefits while working for that employer.

2. Whether Section 3304(a)(15)(A)(ii) of the Federal Unemployment Tax Act requires offset of the entire amount of private pension benefits (not attributable to the claimant's own contributions) against unemployment benefits if the private pension increased as a result of the claimant's base period services.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A20) is reported at 714 F.2d 887. The opinions of the district court (Pet. App. A21-A55 and A56-A83) are reported at 543 F. Supp. 160 and 524 F. Supp. 136.

JURISDICTION

The judgment of the court of appeals was entered on August 29, 1983. The petition for a writ of certiorari was filed on November 10, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Unemployment insurance in this nation is a joint responsibility of the federal government and the states. Under the Federal Unemployment Tax Act (FUTA), 26

U.S.C. (& Supp. V) 3301 *et seq.*, employers must pay federal unemployment taxes on wages paid. Unemployment benefits are provided to claimants by each individual state in accordance with state law, but, if the Secretary of Labor certifies that the laws of a state comply with minimum federal requirements set forth in FUTA, employers in that state are allowed a 90% credit against FUTA tax liability and the state receives federal funds for the administration of its unemployment compensation program. See 26 U.S.C. (& Supp. V) 3302, 3304.

This case concerns the meaning of a 1980 amendment to FUTA that requires states, as a condition of certification, to offset specified pension benefits against unemployment benefits. 26 U.S.C. (Supp. V) 3304(a)(15) (set forth at Pet. App. A103-A104). Section 3304(a)(15)(A)(i) requires states to reduce a claimant's unemployment benefits by the amount of any pension benefits received "under a plan maintained (or contributed to) by a base period employer" of the claimant.[1] Section 3304(a)(15)(A)(ii) limits this offset requirement in the case of private and government employee pension plans (specifically excluding Social Security or Railroad Retirement pensions) to cases where services by the claimant during the base period "affect eligibility for, or increase the amount of, such pension." Section 3304(a)(15)(B) permits states to limit the pension offset requirement "to take into account contributions made by the individual for the pension."

The State of California has enacted a provision in its unemployment law conforming to these federal requirements. Cal. Unemp. Ins. Code § 1255.3 (West 1972) (set

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[1] The "base period" is the period of employment during which eligibility for unemployment insurance benefits is determined. It is generally the one-year period preceding the claim for unemployment benefits (in most states, including California, the first four of the last five quarters). A "base period employer" is an employer who paid wages on which the claimant's eligibility for unemployment benefits is based.

forth at Pet. App. A104-A105). Petitioners challenge the application of these sections, which followed an official interpretive letter by the Department of Labor (UIPL No. 7-81), to their individual situations.

2. Petitioner Rivera has been receiving Social Security retirement benefits for several years. He also receives income under a private pension plan. In 1980 he took a part-time job with Bargetto's Winery in California, which pays Social Security (FICA) taxes but was not the same employer for whom Rivera worked when he became eligible to receive Social Security retirement benefits.

In 1980, petitioner Rivera was laid off from his job. He applied for unemployment benefits based on his work for Bargetto's Winery. Pursuant to the pension offset provision, the California Employment Department offset one-half of Rivera's Social Security pension benefits (see note 6, *infra*) against the $54 per week unemployment benefits for which he would otherwise have been eligible. This offset had the effect of completely eliminating his unemployment benefits. Pet. App. A2. Rivera filed this class action in the United States District Court for the Northern District of California, arguing that FUTA and the corresponding California provision[2] did not require offset of Social Security pension benefits against unemployment benefits in cases where the claimant had become eligible for the Social Security pension while working for a different employer than his "base period employer" (*id.* at A2-A3).

Petitioner Volck's base period employer (Bechtel Corporation) terminated Volck's employment in December 1981. Effective January 1, 1982, Volck became entitled to

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[2]Although state laws may provide for more stringent pension offset requirements than the minimum requirements contained in FUTA, it is undisputed that the California statute was intended to be "construed in the same manner as" FUTA (Pet. App. A8 n.2).

receive a private pension of $745 per month, and he commenced receiving private pension payments in February 1982. Bechtel had contributed to the pension plan under which those payments were received, and Volck's services for Bechtel after the beginning of the base period had caused his pension payments to increase by $35 a month. Volck claimed unemployment benefits of $130 a week. This amount was offset in its entirety by the California Employment Department because of the private pension benefit. See Complaint in Intervention paras. VI-XII. Volck contended that this complete offset was based on a misinterpretation of FUTA and that the statute requires offset only of the amount of the pension increase resulting from the base period services.[3]

3. The district court agreed with petitioners that the statute did not provide for offset where a Social Security pension had vested prior to employment with the base period employer (Pet. App. A45-A51). The court, however, rejected petitioners' contention that offset of private pension benefits should be limited to the increase in pension benefits occurring as a result of the base period employment (*id.* at A32-A45). The court also rejected petitioners' contention that the statute, as thus construed, was unconstitutional (*id.* at A68-A74).

The court of appeals reversed in part, holding that "Section 3304(a)(15)(A)(i) says and means that social security benefits offset unemployment benefits if the base period employer makes social security contributions" (Pet. App. A14) and hence that the State had correctly offset petitioner

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[3]This contention was originally raised by petitioner Rivera and ruled upon by the district court. On appeal, the court of appeals questioned Rivera's standing to raise this claim on behalf of the class. The case was then briefly remanded to the district court to permit petitioners Volck and United Automobile Workers to intervene. See Pet. App. A4.

Rivera's social security pension against his unemployment benefits (*id.* at A8-A14). The court of appeals affirmed the district court's holding that the State had correctly offset petitioner Volck's private pension (*id.* at A14-A17) and held that this construction of the statute did not violate equal protection (*id.* at A17-A19).[4]

ARGUMENT

The decision of the court of appeals correctly construes the 1980 pension offset amendment to the Federal Unemployment Tax Act. This is the first court of appeals decision construing that requirement, and it accords with the administrative practice across the country.[5] Therefore, there is no reason for review by this Court.

1. Petitioners contend (Pet. 13-21) that Section 3304(a)(15)(A)(i) does not require offset of Social Security benefits where the base period employer is different from the claimant's employer at the time the benefits vested. This contention is without merit.

a. The decision of the court of appeals is clearly compelled by the plain meaning of Section 3304(a)(15)(A)(i). Petitioner Rivera's base period employer undeniably "contributed to" the Social Security system — the pension plan involved — on his behalf. Therefore, the statute unambiguously requires that the pension benefits received under that

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[4]The court of appeals also resolved two other issues that are not presented in the petition. It held that UIPL No. 7-81 was not invalid for failure to comply with notice-and-comment requirements (Pet. App. A4-A8; see *id.* at A74-A79) and that the pension offset provision was intended to apply to pensions that vested before the effective date of the statute (*id.* at A19).

[5]We note that one of the district court cases on this issue described by petitioner as pending (see Pet. 10) has now been decided. Relying on the decision in this case, the court upheld the Department of Labor's interpretation of FUTA. See *Peare* v. *McFarland*, No. S 83-69 (N.D. Ind. Jan. 6, 1984).

plan be offset against the unemployment benefits that he would otherwise receive. See Pet. App. A11-A12. As the court of appeals stated (*id.* at A12), "[S]ection 3304(a)(15)(A)(i) does not say the offset will not apply if the base period [employer's] contributions did not affect eligibility for * * * the pension benefits." This section (unlike subsection (A)(ii), which expressly does not apply to Social Security) says nothing about when an employee vests in the plan; it is concerned only with whether the base period employer contributed to the plan. Thus, the statutory language simply cannot support petitioners' interpretation.

b. Petitioners do not appear to dispute that the statute lends no assistance to their position. Instead, ignoring the well-established principle that "[i]f the statutory language is clear, it is ordinarily conclusive" (*United States* v. *Clark*, 454 U.S. 555, 560 (1982)), they contend that the legislative history suggests that Congress did not intend to impose the offset in this situation. In fact, the legislative history is inconclusive and in some respects supports the court of appeals' decision.

The final version of the 1980 pension offset requirement was the result of a conference committee compromise that resolved several differences between the House and Senate proposals. The House proposal would have exempted Social Security and Railroad Retirement pensions from any offset requirement and would have limited offset of other or private pensions essentially in the manner now provided by the statute. The Senate proposal contained no exemption for Social Security or Railroad Retirement pensions and did not expressly contain the limitation now set forth in subsection (A)(ii). The conference committee eliminated the House exemption for Social Security and Railroad Retirement pensions and included the conditions now appearing as subsections (A)(i) and (ii) with the proviso

that subsection (A)(ii) not apply to Social Security and Railroad Retirement pensions. See H.R. Conf. Rep. 96-1343, 96th Cong., 2d Sess. 3 (1980); 126 Cong. Rec. 26040 (1980) (remarks of Sen. Williams).

When asked to describe the effect of the conference committee's action with respect to Social Security pensions, Representative Broadhead, one of the House managers, stated: "The rule with respect to social security is that the States are required to offset one-half of any social security benefits." 126 Cong. Rec. 26363 (1980). This unqualified statement supports the court of appeals' and the Department of Labor's view that Social Security pensions, as a general rule, are to be offset under Section 3304(a)(15)(A)(i).[6]

As the court of appeals stated, the legislative history cited by petitioners, with the exception of an example given by Senator Bradley (see Pet. 16), is "ambiguous and can be explained away as either referring only to private pensions or as referring to a different section of the law" (Pet. App. A13). Senator Bradley's statement, made the day before the statement of Representative Broadhead cited above, simply does not provide a sufficient basis for ignoring the plain language of the statute. Even assuming that Senator Bradley was addressing the situation presented here,[7] the court

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[6]The one-half limitation mentioned by Representative Broadhead reflects Section 3304(a)(15)(B), which permits the states to limit the offset to account for contributions made by the employee. Under the Social Security system, 50% of the contributions are made by the employee. In a March 11, 1983, interpretation, the Department of Labor concluded that subsection (B) permitted the states to eliminate the offset requirement in its entirety in the case of pensions to which the employee contributes 50% or more (Pet. App. A10 n.4). At this time only two states (Michigan and New York) have exercised the option under Section 3304(a)(15)(B) to eliminate offset of Social Security pensions.

[7]Senator Bradley did not explicitly note whether the second employer referred to in his example was in fact a Social Security employer, and thus it is possible that he did not focus on the question presented here.

of appeals was undoubtedly correct in concluding that the statement of one Senator (who was not even on the conference committee) "cannot replace the interpretation compelled by the statutory language" (*id.* at A14). As this Court has repeatedly admonished, "[r]eliance on such isolated fragments of legislative history in divining the intent of Congress is an exercise fraught with hazards, and 'a step to be taken cautiously.' " *New England Power Co.* v. *New Hampshire*, 455 U.S. 331, 342 (1982) (quoting *Piper* v. *Chris-Craft Industries, Inc.*, 430 U.S. 1, 26 (1977)). Reliance instead on the statutory language is particularly appropriate in the case of a technical and complex statute such as this one, where Congress has "a special duty to choose its words carefully." *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772, 791 (1981) (Stevens, J., concurring in the judgment). In addition, the decision of the court of appeals follows the contemporaneous interpretation of the statute by the agency charged with its administration, which is entitled to considerable deference. See, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

Indeed, the rule proposed by petitioners would, as a practical matter, substantially eliminate coverage of Social Security benefits by the offset provision. As the district court's order reflects (see Pet. App. A92), petitioners' contention would require offset of a Social Security pension only in the situation where the base period employer is the same employer for whom the claimant worked when he initially achieved "fully insured" Social Security status (see Pet. 14).[8] The nature of the labor market and the Social

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[8]A person initially becomes eligible to receive Social Security retirement benefits, *i.e.*, achieves "fully insured" status under the Social Security Act, as soon as he has worked in covered employment for the number of quarters (with a minimum of six) equal to or greater than the number of years since he reached age 21, or for one quarter per year since 1950, or for 40 quarters. 42 U.S.C. 414(a).

Security program is such that this would not be a common event. Relatively few persons are working for the same employer at age 62 (when they may receive Social Security retirement benefits (42 U.S.C. 402(a)) that they were working for in their twenties, when they ordinarily would be expected first to achieve "fully insured" status (see note 8, *supra*).[9] A rule that would eliminate the offset of Social Security benefits in the vast majority of cases is hardly consistent with the facts that the major battle at conference on this legislation was over whether Social Security benefits would be covered and that the Senate's view that they should be covered prevailed. See page 6, *supra;* 126 Cong. Rec. 26040 (1980) (remarks of Sen. Williams).

Nor is there any merit to respondents' general suggestion (Pet. 11-15) that the court of appeals' interpretation frustrates the purposes of the statute. Clearly, one of the purposes of the 1980 amendment to FUTA was to restrict unwarranted duplication of benefits. From the perspective of an employer that is contributing both to the Social Security pension fund and to an unemployment compensation fund, it makes no difference whether an employee has already vested in his Social Security pension at a previous job; the twin drain on his resources and on the federal funds involved is the same. Similarly, from the perspective of the employee, it is not apparent why he should be entitled to

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[9]Approximately 93% of the population in the age range of 20-29 was fully insured in 1982. *Social Security Bulletin, Annual Statistical Supplement, 1981*, at 100 (Nov. 1982). The likelihood of a worker's being employed by the same employer in his twenties and sixties is very low. Of 4.1 million workers aged 60-64, over 91% were working for an employer different from the one they worked for 35 years earlier. Bureau of Labor Statistics, U.S. Dep't of Labor, *Special Labor Force Report 235, Job Tenure Declines as Work Force Changes*, Table A at A-8, *reprinted in* Monthly Lab. Rev. 48 (Dec. 1979).

receive unemployment benefits without offset where he switched employers several years before he was laid off, but not where he worked for the same employer continuously throughout his career. In short, there is no reason to suppose that petitioners' interpretation reflects congressional intent. Indeed, the fact that Section 3304(a)(15)(A)(ii), which explicitly does not apply to Social Security benefits, specifically focuses on the vesting date of private pensions strongly suggests that subsection (A)(i) should not be read to include implicitly a condition relating to the vesting date of a Social Security pension. See *Fedorenko* v. *United States*, 449 U.S. 490, 512 (1981).[10]

2. Petitioners contend (Pet. 21-27) that in the case of offset of private pensions, such as petitioner Volck's, Section 3304(a)(15)(A)(ii) limits the amount of the offset to the increase in the amount of the pension attributable to base period employment, rather than the entire amount of the pension. This contention is insubstantial. Both the district court (Pet. App. A32-A45) and the court of appeals (*id.* at A14-A17) concluded that the statutory language could not possibly support such a construction. Nothing in Section 3304(a)(15)(A) purports to limit the amount of the offset. Indeed, petitioners do not dispute that the offset of all pensions, including Social Security, that qualify under subsection (A)(i) is total. Subsection (A)(ii) simply imposes an additional condition for application of that offset in the case of private pensions; once that condition is satisfied, as it concededly was here, the offset provision applies, and there is no basis for limiting the amount (other than the exception in Section 3304(a)(15)(B) for the claimant's own

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[10]Petitioners' suggestion (Pet. 14) that, under the decision below, the 1980 amendment would not provide any benefit for Social Security recipients is erroneous because it ignores the effect of Section 3304(a)(15)(B), which substantially reduces the offset to account for an employee's own contributions.

contributions). As the court of appeals stated (Pet. App. A16), "the wording of the statute does not permit another construction."

Nor does the legislative history lend any support to petitioners' proposed interpretation.[11] Rather, petitioners' contention is primarily that following the plain language of the statute would lead to an unreasonable result, inconsistent with one of the goals of subsection (A)(ii) of preventing duplication in post-employment income replacement benefits based on the same period of employment (see Pet. 22-24). Essentially, petitioners argue that Congress should have enacted a different statute, but that is no basis for refusing

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[11]Indeed, as the court of appeals explained (Pet. App. A15-A16), the one item of legislative history that appears to address the situation presented here, another example given by Senator Bradley, supports the interpretation adopted below. Petitioners cite (Pet. 24) a portion of one statement made by Senator Boren during consideration of the Senate bill, but the full context of his remarks suggests no inconsistency with the decision below. Senator Boren stated that one of the general principles of the legislation was that unemployment compensation should be offset "if a person simply is getting ready to retire and is now going to draw a pension" (126 Cong. Rec. 4570 (1980)) and therefore that "the only offset [should] be from the most recent pension received, from the most recent employer" (*ibid.*). See also *id.* at 4561. The language quoted by petitioner appears in an example of that principle: Senator Boren contrasted the situation where an employee is laid off from a second employer, "some other kind of job" (*ibid.*) than the one that forms the basis for his pension, in which case there would be no offset, with the situation where the pension and the unemployment benefits arise from the same base period employment. In the latter situation, Senator Boren stated, "that part of the employment, the insured employment that is a base for drawing the unemployment benefits that are being claimed by the individual — the pension resulting from that insured employment that is part of the base — would be offset" (*ibid.*). This statement simply reflects the distinction that is clearly set forth in the statute between private pensions that must be offset and those that should not be; it does not suggest any limitation on the *amount* of the offset of a pension, once offset is required under the statute.

to apply the statute that Congress did enact. See *TVA* v. *Hill*, 437 U.S. 153, 194 (1978). Moreover, the premise of petitioners' argument is flawed, for Congress could quite reasonably regard as an inappropriate "duplication" the situation that would exist were petitioners' position to prevail, *i.e.*, a payment of both private pension benefits and a substantial portion of unemployment benefits in circumstances where the base period employer is likely to have made contributions to both systems for the same period.

Certainly it was reasonable for Congress to impose an offset in this situation to avoid such duplication without further complicating the administration of the statute (see Pet. App. A71-A72) by creating an additional computation of a partial offset. The distinction between private pensions that fully vest prior to the base period and those that increase during the base period is a rational one that accords with the purposes of the offset provision;[12] the fact that petitioners are able to construe the statute as written to lead to apparently anomalous results in carefully constructed hypotheticals (see Pet. 25-26 n.30) is not a reason to depart from the statutory language. See generally *Potomac*

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[12]One of the reasons for the original 1976 offset requirement, which was not altered by the 1980 amendment, was the concern about persons who "retire and draw their pensions, who were then trying to draw unemployment benefits, increasing the cost to the Government, [and] increasing the cost to those who were paying the unemployment taxes." 126 Cong. Rec. 4570 (1980) (remarks of Sen. Boren). This problem is more pronounced in the case of persons retiring and drawing pensions that have recently vested, or increased, during the same period of employment giving rise to the unemployment claim, and is less pronounced in the case of pensions that vested and fully accrued long before the base period.

Electric Power Co. v. *Director, OWCP*, 449 U.S. 268, 283-284 (1980).[13]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

RICHARD K. WILLARD
Acting Assistant Attorney General

LEONARD SCHAITMAN
MICHAEL KIMMEL
Attorneys

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[13]For these reasons, petitioners' suggestion (Pet. 27-28) that the statute as written and interpreted by the court of appeals violates the Equal Protection Clause was correctly rejected by the courts below. See Pet. App. A17-A19, A68-A74. The distinction drawn by Congress has a rational basis. It advances the public purposes of controlling duplication in post-employment income replacement benefits based in whole or in part on the same period of recent employment; curtailing potential abuses inherent in "retiring" with both a pension and several months of unemployment benefits; and reducing concurrent responsibility for employer contributions to both systems (see Pet. App. A18). These public purposes are rationally achieved by the distinction drawn in Section 3304(a)(15)(A)(ii), even though Congress might also have achieved these goals by a more or less stringent offset. Hence, the statute satisfies constitutional requirements; the mere fact that two hypothetical employees might be subject to more disparate treatment than the purposes of the statute would seem to require is no basis for a finding of unconstitutionality. See generally *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970). Other courts presented with the question have uniformly rejected the contention that the 1980 FUTA amendments violate equal protection. See *McKay* v. *Horn*, 529 F. Supp. 847, 863 (D.N.J. 1981); *Cabais* v. *Egger*, 527 F. Supp. 498, 502-503 (D.D.C. 1981), aff'd in part and rev'd in part on other issues, 690 F.2d 234 (D.C. Cir. 1982).